

substances into the environment at and from the Industrial Latex Superfund Site located at 350 Mount Pleasant Avenue, Borough of Wallington, Bergen, County, New Jersey (the “Site”); and

(b) Pursuant to Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), for recovery in rem of the costs constituting the Federal lien against the real property comprising the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to Sections 107(a), 107(l)(4), and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a), 9607(l)(4), and 9613(b), and pursuant to 28 U.S.C. §§ 1331 and 1345. This Court has jurisdiction over the property that is the subject matter of the in rem action pursuant to Section 107(l)(4) of CERCLA, 42 U.S.C. § 9607(l)(4), 28 U.S.C. § 1655, and Federal Rule of Civil Procedure 4(n).

3. Venue is proper in this District pursuant to Sections 107(l)(4) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(l)(4) and 9613(b), and pursuant to 28 U.S.C. §§ 1391 (b) and 1395, because the releases or threatened releases of hazardous substances occurred in this District and because the Site is located in this District.

DEFENDANT

4. The 9.67 Acres of Land, more or less, located at 350 Mount Pleasant Avenue, Borough of Wallington, Bergen County, New Jersey, which is the subject of the United States’ in rem claim in this action, is real property. According to title records maintained by the Bergen County Registry of Deeds, the current owner of the Site is either Lipwall, Inc., a New Jersey corporation which is wholly owned by Mr. Jerry Lippman, or Carlstadt Moshen Realty Corporation (“Carlstadt Moshen”), a defunct business. Mr. Lippman holds a mortgage on the Site. On or about March 26, 1986, Mr. Lippman and Carlstadt Moshen were provided with written notice of their potential liability under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). A description of the Site is attached and incorporated hereto as Exhibit A.

GENERAL ALLEGATIONS

5. Lipwall, Inc. is the current titleholder, according to the Bergen County Registry of Deeds, for the Site referred to in paragraphs 1(a) and 4. However, title is clouded by a New Jersey Superior Court Order dated September 19, 1988. That Order states:

that pursuant to the provisions of N.J.S.A. 13:1K-13(a) the sale of the property

located at 350 Mt. Pleasant Avenue, Wallington, New Jersey by the Bergen County Sheriff to Plaintiff Jerry Lippman be and same hereby is, declared null and void; and it is further ORDERED, that title to said property shall be restored to Defendant Carlstadt Moshen Realty Corp. subject to the Mortgage Note held by Plaintiff Jerry Lippman[.]

Jerry Lippman and Lipwall, Inc. v. Carlstadt Moshen Realty Corp., et al., Civil No. L-32320-87, slip op. at 2 (N.J. Super. Ct. Law Div. 9/19/88).

6. From approximately 1951 to 1983, Industrial Latex Corporation (“Latex”) manufactured natural and synthetic rubber compounds and chemical adhesives at the Site.

7. Latex owned the Site from approximately 1951 to 1973.

8. Jack Schorr owned the Site from 1973 to 1984 subject to a mortgage given to Jerry Lippman.

9. Prior to 1983, on information and belief, hazardous substances were disposed at the Site, within the meaning of Sections 107(a)(1) and (2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and (2) and Section 101(20) of CERCLA, 42 U.S.C. § 9601(20).

10. On or about February 17, 1984, Carlstadt Moshen acquired title at a foreclosure sale.

11. On or about March 14, 1984, Carlstadt Moshen gave a mortgage on the Site to Mr. Lippman.

12. On August 16, 1985, Mr. Lippman acquired the Site at a foreclosure sale.

13. On March 26, 1986, EPA notified Mr. Lippman and Carlstadt Moshen that they were potentially responsible parties as an owner of the Site at the time of disposal and as a current owner of the Site, respectively.

14. In 1986, EPA initiated a removal action to address contamination present at the Site. Sampling and analyses of on-Site materials revealed the presence of benzene, ethylbenzene, toluene, xylene, and extensive PCB (polychlorinated bi-phenyl) contamination. The aforementioned materials are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). By January 1987, EPA removed 1,200 drums and 22 underground storage tanks from the Site.

15. On or about January 5, 1988, EPA filed its “Notice of Federal Lien on Real Property.”

16. On March 30, 1989, the Site was listed on the National Priorities List.

17. In June 1989, EPA initiated a remedial investigation/feasibility study (RI/FS) to determine the nature and extent of contamination at the Site. EPA found approximately 600 buried drums, 35,000 cubic yards of contaminated soil and 30 contaminated vats. The septic system and on-Site buildings were also contaminated.

18. In September 1992, EPA issued a Record of Decision ("ROD") detailing the remedial actions required. The ROD included:

- a) Treatment by excavation of contaminated soil and treatment of low temperature thermal desorption;
- b) Excavation and off-Site disposal of buried drums;
- c) Removal and off-Site disposal of vats; and
- d) Demolition and off-Site disposal of on-Site buildings.

19. On April 10, 1996, EPA issued an Explanation of Significant Differences which changed or eliminated remediation goals set forth in the ROD that were below local background levels.

20. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

(1) the owner and operator of a vessel or a facility,

(2) any person who at the time of disposal of any hazardous substances owned or operated any facility at which such hazardous substances were disposed of,

. . . shall be liable for,

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan

21. As of June 19, 2001, the United States had incurred at least \$42,593,768.19 in response costs in connection with the Site.

22. The United States expects to continue to incur response costs in connection with the Site in the future.

CLAIM FOR RELIEF

23 Paragraphs 1 through 22 are realleged and incorporated herein by reference.

24. There were releases and threatened releases of hazardous substances within the meaning of Section 101(14) and (22), and Section 107(a) of CERCLA, 42 U.S.C. §§ 9601(14) and (22), and 9607(a), into the environment at and from the Site.

25. The Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

26. EPA’s actions with respect to the Site constitute “removal” and/or “remedial” actions -within the meaning of Section 101(23) and 101(24) of CERCLA, 42 U.S.C. §§ 9601(23) and 9601(24).

27. The United States has incurred response costs in conducting the removal and remedial actions. The response costs the United States has incurred are not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. § 300.

25. Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), provides in pertinent part:

(1) In general

All costs and damages for which a person is liable to the United States under subsection (a) of this section . . . shall constitute a lien in favor of the United States upon all real property and rights to such property which --

- (A) belong to such person; and
- (B) are subject to or affected by a removal or remedial action.

(2) Duration

The lien imposed by this subsection shall arise at the later of the following:

- (A) The time costs are first incurred by the United States with respect to a response action under this chapter.
- (B) The time that the person referred to in paragraph (1) is provided (by certified or registered mail) written notice of potential liability.

Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 9613 of this title.

(4) Action in rem

The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred.

26. Under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), upon information and

belief, Carlstadt Moshen or, in the alternative, Lipwall, Inc., is/are jointly and severally liable, as current owner(s) of the Site, to the United States for all response costs incurred by the United States in connection with the Site, including enforcement costs and prejudgment interest on such costs. Pursuant to Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), the costs incurred by the United States in connection with the Site constitute a lien upon the real property constituting the Site.

27. In accordance with Section 107(l)(2) of CERCLA, 42 U.S.C. § 9607(l)(2), Carlstadt Moshen and Jerry Lippman were provided with written notice of their potential liability on or about March 26, 1986, informing them that they were potentially responsible parties under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

28. Pursuant to Section 107(l)(4) of CERCLA, 42 U.S.C. § 9607(l)(4), the costs constituting the lien may be recovered in an action in rem in the United States District Court for the District in which the removal or remedial action has occurred.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, United States of America, requests that this Court grant the following relief:

1. Judgment in an amount necessary to fully reimburse the United States for the response costs incurred in connection with the Site, including costs and interest;
2. Order the real property and rights covered by the lien to be sold and the proceeds from any sale to be paid to the United States for all response costs for which Carlstadt Moshen or Lipwall is liable under CERCLA;
3. Award the United States the costs of this action, including its costs of attorney time; and
4. Such other and further relief as the Court deems appropriate.

Respectfully submitted,

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EXHIBIT A

Industrial Latex Site
9.67 Acres, More or Less, located at
350 Mt. Pleasant Avenue, Wallington, NJ

A tract or parcel of land and premises situated in the Borough of Wallington in the County of Bergen and State of New Jersey, which is bounded and described as follows: Beginning at a point on the southeasterly line of Mt. Pleasant Avenue distant thereon 376.49 feet northerly from the intersection of the southeasterly line of Mt. Pleasant Avenue and the northerly line of Spring Street and running thence

- (1) Northerly 41 degrees 16 minutes East 667.23 feet; thence
- (2) South 43 degrees 30 minutes East 524.06 feet; thence
- (3) Southerly 24 degrees 20 minutes West 85.39 feet; thence
- (4) South 56 degrees 2 minutes East 35.15 feet; thence
- (5) South 29 degrees 41 minutes West 569.24 feet; thence
- (6) North 44 degrees 3 minutes West 8.18 feet; thence
- (7) South 29 degrees 41 minutes West 29.66 feet; thence
- (8) North 44 degrees 3 minutes West 711.56 feet

to the point in said southeasterly line of Mt. Pleasant Avenue and point or place of beginning.

VERIFICATION

The undersigned, being first duly sworn, states that the facts and allegations of the foregoing Complaint are true and correct to the best of her knowledge. To the extent the undersigned has relied on information from others, she believes that information to be true and reliable.

STEPHANIE VAUGHN
Remedial Project Manager
U.S. Environmental Protection Agency - Region II

Stephanie Vaughn came before me this ____ day of July 2001, and after being duly sworn, did state that the above information is true and correct to the best of her knowledge.

NOTARY PUBLIC

My Commission Expires: _____